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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/761,755	01/19/2004	James Jen	14186 B	2876
36672	7590	01/31/2005	EXAMINER	
CHARLES E. BAXLEY, ESQ. 90 JOHN STREET THIRD FLOOR NEW YORK, NY 10038			DAVIS, CASSANDRA HOPE	
		ART UNIT		PAPER NUMBER
		3611		

DATE MAILED: 01/31/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/761,755	JEN, JAMES
	Examiner	Art Unit
	Cassandra Davis	3611

*The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply*

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 26 November 2004.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-8 is/are pending in the application.
 - 4a) Of the above claim(s) 5,7 and 8 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-4 and 6 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____.

DETAILED ACTION

Election/Restrictions

1. Applicant's election of Group I, drawn to figures 1-2 in the reply filed on November 23, 2004 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).
2. Claims 5, 7, and 8 have been withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim.

Specification

3. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," "The current invention," etc.

Claim Rejections - 35 USC § 112

4. Claims 1-4, and 6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims 1 and 6 must be in one sentence form only.

In claim 2, line 5, the phrase "the top" and "the lower part" lack antecedent basis.

In claim 2, line 5, it is unclear if the "short taper rod" is the same as the short tapered rod recited in claim 1, line 9.

In claim 5, it is unclear if the air vanes and the driving vanes are the same as in claim 1.

Claim Objections

5. Claim 4 is objected to because of the following informalities: it appears that that the reference character "(3)" should read "(12)". Appropriate correction is required.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-4 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bucknell, UK Patent Application 2 170 757 in view of Schirneker, DE 37 18369.

8. With respect to claim 1, Bucknell teaches table decoration employing candles comprises a rotating bearer (15) with an ornaments (16) fixed to its external surface, a

vertical rod (12) and base (11) that support the rotating bearer (15). The vertical rod (12) is vertically fixed to the base (11) and candles emitting heat (13) are set on the base (11) under the rotating bearer (15). The ornaments are fixed to the external surface of the rotating bearer (15) has partial side surface formed into evenly distributed vanes (16) with air-vane rake face and exit. The rotating bearer (12) has a recess (35) at its inner top center and the vertical rod (12) has short vertical upward taper rod (25) such that the recess (35) rest on the tip of the rod (25) so that the rotating bearer (12) can freely rotate. (See lines 101-106). The rotating bearer (15) with ornaments (16) fixed to its external surface is put downward vertically with the recess (35) resting into the rod (25) at the top of the vertical rod (12). The candle source emitting heat (13) warms the air in proximity and forms a low pressure at the light source (13), thus forming a rising air flow that acts on the driving vanes (16) of the ornament to produce lateral force, resulting in driving the rotating bearer (15) and the ornament fixed to its external surface rotate around the rod (12).

9. Bucknell does not teach the short tapered rod on the rotating bearer and the recess on the vertical rod.

10. Schirneker teaches a rotating shadow luminary comprising a rotating bearer (1,15) with ornamental openings (22) on the surface thereof, a vertical rod (16), stirrup (23) and base (24) that support the rotating bearer (15). The vertical rod (16) is vertically fixed to the stirrup 23 which is fixed to the base (24) and a candle emitting heat (25) is set on the base (24) under the rotating bearer (15). The rotating bearer (15) formed into evenly distributed vanes (19) with air-vane rake face and exit. The rotating bearer (15)

has a bearing pin or ball (17) situated in counter bearing or recess (not labeled) at the top center of the vertical rod (16). The rotating bearer (15). The candle source emitting heat (25) warms the air in proximity and forms a low pressure at the light source (25), thus forming a rising air flow that acts on the driving vanes (19,21) resulting in driving the rotating bearer (15) around the rod (12).

11. It would have been obvious to one having ordinary skill in the art at the time this invention was made to construct the taper rod and recess of the vertical rod and rotating bearer of the device taught by Bucknell with the taper rod or pin mounted on the rotating bearer and the recess on the vertical rod as taught by Schirneker, since it has been held that a mere reversal of the essential working parts of a device involves only routine skill in the art. *In re Einstein*, 8 USPQ 167.

12. With respect to claim 2, Bucknell teaches the rotating bearer (15) is an axisymmetric cone-shaped web that comprises at least two horizontal rings (17) of different diameters and at least two longitudinal frameworks (19), and the ornament (32) is fixed to said horizontal rings (17) and longitudinal framework. (See figure 3). The rotating bearer (15) also comprises a top piece (18) at the top round disc.

13. With respect to claim 3, Bucknell teaches the base (10) has a hole (21) in its center and the vertical rod (12) is inserted into this hole (32). The candles are inserted into many holes (28) in the base (10) around the vertical rod (12).

14. Claims 1, 2, 3, 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bucknell in view of Zer et al., U. S. Patent 5,860,725.

15. Zer et al. teaches a heat operated rotatable device comprising a rotating bearer (12) with ornamental openings (14) on the surface thereof, a rod (26), top cap (22) and base (24) that support the rotating bearer (12). The rod (26) is fixed to the base (24) and a candle emitting heat (40) is set on the base (24) under the rotating bearer (12). The rotating bearer (12) has a bearing pin or pivot post (28) situated in recess (30) at the top center of the top cap (22).

16. It would have been obvious to one having ordinary skill in the art at the time this invention was made to construct the taper rod and recess of the vertical rod and rotating bearer of the device taught by Bucknell with the pivot post or pin mounted on the rotating bearer and the recess on the top cap on the vertical rod as taught by Zer et al, since it has been held that a mere reversal of the essential working parts of a device involves only routine skill in the art. *In re Einstein*, 8 USPQ 167.

Allowable Subject Matter

17. Claim 5 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

18. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following Patents are cited to show heat operated rotating devices: Chang - US 20040265760A1, Swearingen et al. – US20040265760, Muller - DE10227722A120040108; Domain – GB 2098715. Glass et al., US 3,402,929 is cited to show a vertical rod with a cap with a concave surface for supporting a figure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cassandra Davis whose telephone number is 703-308-2223. The examiner can normally be reached on Monday-Friday 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley Morris can be reached on 703-308-0629. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Cassandra Davis
Primary Examiner
Art Unit 3611

CD
January 27, 2004